

Terms & Conditions of Sale

1. DEFINITIONS

"Buyer" means the party dealing with the Seller.

"Goods" means the goods (including any instalment of the goods or any parts for them) which the Seller is to sell in accordance with these Terms and Conditions.

"Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce in force at the date when the Contract is made.

"Price" means the price at which the Seller has agreed to accept the Buyer's order and includes, where appropriate, the New Price as defined in Clause 4.3.

"Seller" means Electrolux Foodservice Equipment a division of Electrolux Professional Limited (Registered in England No. 637383) of Addington Way, Luton, Bedfordshire LU4 9QQ (VAT No. GB196 2439 34).

"Terms and Conditions" means the standard terms and conditions of sale set out in this document.

"Trade Marks" means any trade mark (whether registered or unregistered) owned by or licensed to the Seller affixed to the Goods other than any trade mark, label or logo affixed following a request of the Buyer pursuant to Clause 10.4.

"Writing" includes, other than for the purposes of Clause 12, facsimile transmissions and writing on the screen of a visual display unit or other similar device.

2. BASIS OF THE SALE

2.1 These Terms and Conditions will govern any contract for the sale of Goods by the Seller to the Buyer to the exclusion of any other terms, including any terms and conditions which the Buyer may purport to apply under any purchase order, confirmation of order or other document.

2.2. Any variation of these Terms and Conditions will only bind the Seller if agreed in writing between authorised representatives of the Seller and the Buyer.

2.3. The Seller's employees are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing. In entering into any contract and in accepting delivery, the Buyer acknowledges that it does not rely on representations concerning the Goods which are not confirmed in this way.

3. ORDERS AND SPECIFICATIONS

3.1. All Goods are offered for sale subject to availability and subject to the Seller's acceptance of the Buyer's order.

3.2. No order submitted by the Buyer shall be deemed accepted by the Seller unless and until it is confirmed by the Seller, either orally or in writing.

3.3. Any literature published or submitted by the Seller to the Buyer which contains any descriptions, specifications, drawings or prices of the Goods is published or submitted for guidance only. The Seller reserves the right to make modifications in the design and specification of the Goods without notice to the Buyer.

4. PRICE

4.1 The Buyer will pay the Price together with an amount equal to VAT chargeable on the sale of the Goods.

4.2. Unless otherwise agreed, the Price is inclusive of the cost of packaging, insurance and transportation to an address within the United Kingdom mainland. For Northern Ireland and offshore islands of the United Kingdom a packaging, insurance and transportation surcharge may be payable at the discretion of the Seller.

4.3. The Seller may increase the Price before the Goods are delivered to the Buyer to reflect any increase in cost to the Seller including, among other things, foreign exchange fluctuations, taxes and duties, the cost of labour, materials, transport and other fees and charges.

4.4 The price of the goods is determined on the date that the order is entered into the Electrolux system. Subsequent changes in price up or down have no impact on the price to be paid.

4.5 If appropriate, the cost of pallets and returnable containers will be payable by the Buyer in addition to the Price, but full credit will be given to the Buyer provided the Buyer returns the pallets and containers to the Seller in good repair.

5. PAYMENT

5.1 The Buyer will pay all amounts specified in the Seller's invoice on the due date in cleared funds without any deduction or set-off on the grounds of any alleged breach of any contract between the Seller and the Buyer or on any other grounds. Those amounts will be payable by the Buyer, notwithstanding that property in the Goods has not passed to the Buyer. The time of payment of those amounts will be of the essence of these Terms and Conditions.

5.2. If the Buyer fails to pay those amounts on the due date then, in addition to any other right or remedy available to the Seller, the Seller may do either or both of the following :-

(A) Charge the Buyer interest (after as well as before judgement) on the

amount unpaid at the rate of two per cent. per annum above the base lending rate of Lloyds TSB Bank Plc from time to time until full payment is made;

(B) Cancel the contract or suspend any further deliveries to the Buyer without notice and without liability.

6. EXPORT RESTRICTION CLAUSE

The Buyer shall not export the Goods outside the European Economic Area ("EEA") and shall not sell the Goods to any customer in any country which is:

(A) outside the EEA ; or

(B) within the EEA if to the knowledge of the Buyer that customer intends to resell the Goods in any country which is outside the EEA.

Goods exported or sold in breach of this Clause 6 shall not benefit from any Electrolux warranty. The Buyer shall be solely responsible for the consequences of any breach of this Clause.

7. DELIVERY

7.1 The place for delivery of the Goods will be agreed between the Seller and the Buyer on the date of acceptance of the Buyer's order. If no place for delivery is agreed, the Seller may deliver the Goods by either:

(A) notifying the Buyer that the Goods are ready for collection from premises nominated by the Seller (the "Seller's premises") ; - or

(B) tendering the Goods at an address agreed between the Seller and the Buyer.

7.2. In the case of delivery in accordance with Clause 7.1(A), the Buyer will load the Goods when the Goods are collected from the Seller's premises and the Buyer will be liable for any damage to the Goods or losses occurring during loading. In the case of delivery in accordance with Clause

7.1(B), the Goods will be, or will be deemed to be, unloaded by the Buyer and the Buyer will be liable for any damage to the Goods or losses occurring during unloading.

7.3. Any dates quoted for delivery of the Goods are indicative only. Time for delivery will not be of the essence of these Terms and Conditions and the Seller will not be liable for any loss or expenses sustained by the Buyer arising from any delay in delivery of the Goods howsoever caused.

7.4. The Buyer, or where relevant, the person to whom delivery is made in accordance with Clause 7.1(B), must inspect the Goods on delivery and sign the required proof of delivery document or collection acceptance document. A signature on that document will constitute conclusive evidence against the Buyer of receipt of the quantity of Goods indicated on that document free from any apparent defect or damage. The Buyer may not reject the Goods or any part of them because of short delivery. If the Goods are alleged to be damaged or defective on delivery, a description of the alleged damage or defect must be given in writing at the time of delivery and signed by or on behalf of the

Buyer or, where relevant, the person to whom delivery is made in accordance with Clause 7.1(B).

7.5. The Seller reserves the right to make delivery of the Goods by instalments. If the Goods are to be delivered in instalments, each delivery will constitute a separate contract. The Buyer may not treat the contract as a whole as repudiated if the Seller fails to deliver any one or more of the instalments or if the Buyer has a claim in respect of any one or more of the instalments.

7.6. If the Buyer fails to take delivery of the Goods then, in addition to any other right or remedy available to the Seller, the Seller may do either or both of the following :

(A) store the Goods until actual delivery and charge the Buyer for the costs (including insurance) of storage, together with any other reasonable incidental costs ;

(B) sell the Goods at the best price readily obtainable by the Seller and (after deducting all storage and selling expenses) charge the Buyer for any shortfall below the Price.

7.7. In the case of delivery to an address outside the United Kingdom, the Goods will be delivered F.O.B (as that term is used in Incoterms) the air or sea port of shipment. The Seller will be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979, as amended from time to time.

8. RISK AND PROPERTY

8.1. Risk of damage to or loss of the Goods will pass to the Buyer ;

(A) in the case of Goods delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection ; or

(B) in the case of Goods delivered otherwise than at the Seller's premises, on delivery at the agreed address.

8.2 Notwithstanding delivery and the passing of risk in the Goods, property in the Goods will not pass from the Seller until the Seller has received in cash or cleared sums full payment of the Price and all other



Electrolux
PROFESSIONAL

sums which are due, owing or payable by the Buyer to the Seller or in respect of which the Buyer will, or may in the future, become liable to make payment to the Seller.

8.3 Until property in the Goods passes to the Buyer:-

(A) The Buyer will keep the Goods as the Seller's fiduciary bailee. The Buyer will keep the Goods separate from those of the Buyer and third parties and keep the Goods properly stored, protected, insured and identified as the Seller's property.

(B) Subject to (C) below the Buyer may resell the Goods in the ordinary course of its business but will account to the Seller for the proceeds of sale or otherwise of the Goods, including insurance proceeds. Until the Buyer has accounted to the Seller for the proceeds of sale or otherwise, of the Goods, the Buyer will hold the relevant debt due to the Buyer and the relevant proceeds on trust for the Seller. The Buyer will keep all such proceeds separate from any moneys or property of the Buyer and third parties.

(C) The Seller may revoke the Buyer's power of sale in respect of the Goods. The power of sale will automatically cease if a petition is presented, any order made or any resolution passed or any other action taken for or with a view to the Buyer's winding up or administration or (being an individual) bankruptcy, or an administrative receiver, receiver, liquidator or administrator or similar officer is appointed in respect of the whole or any part of its undertaking, property or assets or if it convenes a meeting for the purpose of making, or proposing to enter into, any agreement for the benefit of its creditors. This also applies to any analogous proceedings in any other jurisdiction.

(D) The Seller may at any time require the Buyer to deliver up to the Seller those Goods which have not been re-sold. If the Buyer fails to do so or if the power of sale has been revoked or ceased in accordance with Clause

8.3 (C) the Seller may enter the premises of the Buyer or any third party where the Goods are stored or reasonably believed to be stored and re-possess them.

(E) The Buyer may not pledge or in any way charge by way of security any of the Goods which remain the property of the Seller.

9. LIABILITY

9.1 The Seller will not be liable for damaged Goods unless a claim is notified to the Seller in writing in accordance with Clause 12 within seven days of delivery. The Seller will not be liable for defective Goods unless a claim is notified to the Seller in writing in accordance with Clause 12 within seven days of the Buyer becoming aware of the defect, or, if earlier, within 6 months of delivery. In each case, the notification must include the invoice number, delivery note number and details of the claim.

In the case of a valid claim, the Seller may, in its sole discretion, replace the Goods (or the part in question) or refund to the Buyer the Price (or an appropriate proportion of the Price). The Seller will have no further liability to the Buyer.

9.2 The Seller will not be liable for short delivery or non-delivery unless a claim is notified to the Seller in writing in accordance with Clause 12 within seven days of delivery or, in the case of non-delivery, the indicative date given by the Seller for delivery. The notification must give details of the claim, and, where appropriate, the invoice number and delivery note number. In the case of a valid claim, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace the Goods not delivered over the Price. In relation to Goods which the Buyers sells or intends to sell in breach of Clause 6 the Seller will have no liability whatsoever for short delivery or non-delivery.

9.3 The Seller will not be liable in any way for loss, damage, costs or expenses (including loss of profit) arising directly or indirectly from any failure or delay in performing any obligation under these Terms and Conditions by reason of any event or circumstance outside the reasonable control of the Seller, including, amongst other things, any strikes, industrial action, failure of power supplies or equipment

9.4 Nothing in this Clause shall limit or exclude any liability of the Seller for death or personal injury caused by the Seller's negligence. Except as provided in this Clause 9, the Seller will not be liable to the Buyer for any consequential loss or damage, costs, expenses (including loss of profit) or other claims for compensation whatsoever arising out of or in connection with the sale of the Goods or their use or resale by the Buyer.

10. EXCLUSIVE LABEL GOODS

10.1 The Seller hereby grants the Buyer the non-exclusive right to use the Trade Marks in connection with the promotion, advertisement and sale of the Goods in the EEA only.

10.2 The Seller makes no representation or warranty as to the validity or enforceability of the Trade Marks nor as to whether the Trade Marks infringe any third party intellectual property rights.

10.3 The Buyer must resell the Goods in the same condition as delivered. All packaging (including packaging bearing any trade mark) and associated intellectual property must remain intact and must not be tampered with or obliterated in any way.

10.4 If the Seller is requested to supply the Goods in packaging or bearing labels or logos supplied, designed or commissioned by the Buyer, the Buyer will be solely responsible for ensuring that these do not infringe any legal requirements or any third party intellectual property rights. The Buyer will indemnify the Seller against any loss, cost, expense or liability arising as a result of infringement of law or breach of third party intellectual property rights in connection with labels, logos or packaging, designs or artwork applied to or supplied with the Goods on the Buyer's instructions.

11. INSOLVENCY OF THE BUYER

If the power of sale has ceased in the circumstances described in Clause 8.3(C), or if the Seller reasonably believes that any of those circumstances may occur in relation to the Buyer and notifies the Buyer of its belief, then in addition to any other right or remedy available to the Seller, the Seller may terminate the contract or suspend any further deliveries under the contract without any liability to the Buyer. If the Goods have been delivered but not paid for, the Price and all other amounts payable by the Buyer to the Seller shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

12. NOTICES

12.1 Any notice given or made under these Terms and Conditions will be in writing (other than writing on the screen of a visual display unit or other similar device, which shall not be treated as writing for the purposes of this Clause).

12.2 A notice will be addressed as provided in Clause 12.3 and, if so addressed, will be deemed to have been duly given or made as follows :-

(A) if sent by personal delivery, upon delivery at the address of the relevant party ; or

(B) if sent by first class post, two clear business days after the date of posting.

12.3 For the purposes of these Terms and Conditions, notices will be given to the Seller at its registered office set out in Clause 1, for the attention of the Company Secretary. Notices will be given to the Buyer at its registered office or its principal place of business for the attention of the Purchasing Director/Manager.

12.4 The Seller and the Buyer may notify each other of a change in their name, relevant addressee and address for the purposes of Clause 12.3. This notification will only be effective. on :-

(A) the date specified as the date on which the change is to take place ; or

(B) if no date is specified or the date specified is less than five clear business days after the date on which notice is given, the date falling five clear business days after notice of any change has been given.

12.5 This Clause will not apply for serving any writ, summons, order, judgement or other document arising in connection with any disputes under these Terms and Conditions.

13. GOVERNING LAW AND JURISDICTION

13.1 These Terms & Conditions shall be governed by and construed in accordance with English Law.

13.2 The parties irrevocably agree that for the exclusive benefit of the Seller the courts of England are to have jurisdiction to settle any disputes which may arise in connection with these Terms and Conditions.

14. MISCELLANEOUS

14.1 If the Seller does not exercise a right or power when it is able to do so this will not prevent it exercising that right or power. When it does exercise a right or power it may do so again in the same or a different manner. The Seller's rights and remedies under these Terms and Conditions are in addition to any other rights and remedies it may have. Those other rights and remedies are not affected by these Terms and Conditions.

14.2 If any provision of these Terms and Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity or enforceability of the other provisions of these Terms and Conditions and the remainder of the provision in question shall not be affected.